

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

UNITED STATES OF AMERICA	:	
	:	
vs.	:	DOCKET NO. 5:08-CR-23-HL
	:	
ALFREDO ORTEGA	:	
_____	:	

ORDER FOR DISMISSAL

Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure and by leave of Court endorsed hereon, the United States Attorney for the Middle District of Georgia hereby dismisses the pending indictment in the above-referenced case against ALFREDO ORTEGA, defendant.

REASON: This matter was indicted by the grand jury on April 17, 2008. Defendant has never been arrested, and his location is unknown and not likely to become known. In Count Two of the indictment defendant was charged with “Aggravated Identity Theft,” a violation of Title 18, United States Code, Section 1028A. Subsequent to indictment, the United States Supreme Court issued a decision titled *Flores-Figueroa v. United States*, 556 U.S. 646, 129 S.Ct. 1886, 1894 (2009), in which the Court held that to establish a violation of Section 1028A the government must prove that the defendant knew that the means of identification at issue belonged to another person. The holding in *Flores-Figueroa* was a change in the law as it existed in the Eleventh Circuit at the time of indictment, and is a burden of proof the government would not be able to meet in the present case. *See, United States v. Hurtado*, 508 F.3d 603, 610 (11th Circuit 2007) (section 1028A(a)(1) did not require the government to prove that Hurtado knew that the means of identification that he possessed and used belonged to another actual person).

Respectfully submitted, this 4th day of September, 2013.

MICHAEL J. MOORE
UNITED STATES ATTORNEY

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Leave of Court is granted for filing of the foregoing dismissal. Dismissal is without prejudice.

s/ Hugh Lawson

HUGH LAWSON

UNITED STATES DISTRICT JUDGE

DATE: September 5, 2013